

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3592 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF MADHABHAI R BHALIYA- BHAICHANDBHAI M BHALIYA

Versus

SHANKARBHAI M PATEL

Appearance:

MR RN SHAH for Petitioners

MR JITENDRA M PATEL for Respondents No. 1-1/2

Respondent No. 2 served.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 31/01/2002

ORAL JUDGEMENT

#. The petitioners herein challenge the judgment and order dated 26th February, 1990 passed by the learned Gujarat Revenue Tribunal (hereinafter referred to as 'the

Tribunal') in Revision Application No.TEN.B.A.871/85.

#. The petitioners herein are the heirs and legal representatives of the deceased Madhabhai Ramabhai. The said Madhabhai Ramabhai, on 23rd June, 1979, made an application to the Mamlatdar and A.L.T. under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') and claimed tenancy over the land Survey No.209 admeasuring Acres-6 and Gunthas-8 situated at Village Dhanora, Taluka Savli, District Vadodara. The said Madhabhai Ramabhai claimed that he was the tenant in the said land and was cultivating the same for over 25 years. He used to give crop-share to the landlord (i.e. the respondent no.1 herein). Pursuant to the said application, Tenancy Case No.9275/79 was registered. The Mamlatdar and A.L.T., Savli, after considering the evidence led by both the parties, held the said Madhabhai Ramabhai to be the tenant in the said land. Feeling aggrieved, the respondent no.1 preferred Tenancy Appeal No.83/80 before the Deputy Collector, Vadodara. The Deputy Collector, under his judgment and order dated 25th October, 1985, allowed the said Appeal and set aside the order of the Mamlatdar and A.L.T. The said order dated 25th October, 1985 was challenged by the said Madhabhai Ramabhai before the Tribunal in above referred Revision Application No.871/85, which was rejected on 26th February, 1990. Pending the said Revision, the said Madhabhai Ramabhai passed away. The heirs and legal representatives of the said Madhabhai Ramabhai were impleaded as revision applicants and have preferred the present petition.

#. The Mamlatdar and A.L.T. has, under his order dated 27th June, 1980, believed the oral evidence given by the said Madhabhai Ramabhai and his witnesses and certain accounts produced by the said Madhabhai Ramabhai. It was believed that the said accounts were written in the hand of the respondent no.1, landlord and were in respect of the crop-share given to the said landlord out of the produce of the said land Survey No.209. The Deputy Collector, under his judgment and order dated 25th October, 1985, was pleased to observe that the name of the respondent no.1, landlord appeared in the revenue records right from the year 1951-52 till the year 1978-79. The said land was shown to be self-cultivated. It was for the first time in the year 1979 that the concerned Talati had entered the name of the said Madhabhai Ramabhai in pencil writing. Even the accounts produced by the said Madhabhai Ramabhai were not proved to be in the handwriting of the landlord, respondent no.1 and in respect of the said land Survey No.209. Besides,

it was not even the case of the said Madhabhai Ramabhai that he used to pay land revenue in respect of the said land Survey No.209. Hence, the Deputy Collector, Vadodara did not believe the evidence of the said Madhabhai Ramabhai that he used to cultivate the said land Survey No.209 for over 25 years. He, therefore, allowed the Appeal and set aside the order dated 25th October, 1985 of the Mamlatdar and A.L.T. The said reasoning of the Deputy Collector, Vadodara has been confirmed by the Tribunal under the impugned judgment and order dated 26th February, 1990. The Tribunal also has held that the handwriting of the accounts produced by the said Madhabhai Ramabhai was not proved to be that of the landlord, respondent no.1 or in respect of the said land Survey No.209. Except the oral evidence given by the said Madhabhai Ramabhai and his witnesses, no documentary evidence supporting his claim of tenancy in the said land Survey No.209 was produced.

#. The judgments of the Tribunal and the Deputy Collector, Vadodara are based on sound reasoning and proper appreciation of evidence. The concurrent finding recorded by the Tribunal and the authority below, therefore, does not warrant interference. No other question of law is involved in this petition.

#. In view of the finding as stated hereinabove, the deceased Madhabhai Ramabhai can not be said to be a tenant in the said land Survey No.209. The petition is, therefore, dismissed. Rule is discharged. Interim relief is vacated. The parties shall bear their own costs.

31st January, 2002. (Ms. R.M.Doshit, J.)

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